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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re T.T., A Person Coming Under the  
Juvenile Court Law.

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LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M. H.,

Defendant and Appellant.

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B257190

(Los Angeles County  
Super. Ct. No. CK83804)

APPEAL from an order of the Superior Court of Los Angeles County,  
Connie R. Quinones, Judge. Affirmed.

M. Elizabeth Handy, under appointment by the Court of Appeal, for Defendant  
and Appellant.

Tarkian & Associates and Arezoo Pichvai for Plaintiff and Respondent.

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M.H. (mother) appeals the order denying her Welfare and Institutions Code section 388 petition<sup>1</sup> and terminating her parental rights to her son, T.T. She challenges the juvenile court's findings that renewing mother's reunification services is not in the child's best interest and that the beneficial relationship exception to adoption does not apply. We find no error and affirm the order.

### **FACTUAL AND PROCEDURAL SUMMARY**

The Department of Children and Family Services (DCFS) filed a section 300 petition after mother tested positive for amphetamines at T.T.'s birth in August 2010. T.T. was detained in foster care with the D.'s. An amended petition alleged mother and the child's father, who is not a party to this appeal, had unresolved histories of substance abuse. In October 2010, the parents were arrested for possession of methamphetamine. The same month, the parents pled no contest to DCFS's allegations, and the juvenile court ordered reunification services.

Mother's compliance with her case plan was uneven. She visited T.T. and completed a program at the Los Angeles Centers for Alcohol and Drug Abuse, but she also suffered several arrests for being under the influence of drugs and in possession of drug paraphernalia, and for petty theft. In June 2011, the court terminated mother's reunification services.

Mother's string of arrests for drug-related offenses and robbery continued through January 2013, and her visits with T.T. became inconsistent. Ms. D, the foster mother, complained that mother made false accusations against her and subjected her other children to unnecessary visits by social workers. The D.'s home was briefly decertified in 2012, and T.T. was replaced in two other homes, where he refused to eat. He was returned to Ms. D., whose husband meanwhile had passed away. In June 2013, Ms. D. committed to his adoption.

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code.

Between May and November 2013, mother completed a methamphetamine dependency program, as well as parenting classes and counseling, but she did not visit with T.T. for several months, and her resumed visits did not go well. T.T. exhibited developmental delays and significant behavioral problems, including severe tantrums and aggression. He had difficulty relating to strangers, but was very attached to Ms. D. During a visit in July 2013, T.T. was so distressed that the social worker had to end the visit, noting that T.T. did not recognize mother and she did not appear to understand his needs. Ms. D., who was able to comfort T.T. during the visit, reported that he showed aggression and had trouble sleeping for days afterwards.

Between September and December 2013, mother had monitored visits with T.T. twice a month. During the visits, T.T. would cry for Ms. D. and throw temper tantrums, which mother could not control. The visits improved somewhat between January and March 2014, but Ms. D. continued to report T.T. had difficulty adjusting afterwards. T.T.'s therapist opined that disruptive changes caused a "regressive set back in his behavior," and it was important to prevent them. The therapist believed predictable and continuous care, which is what he received from Ms. D., was essential for T.T.'s development.

In March 2014, mother filed a section 388 petition seeking reinstatement of her reunification services, and DCFS filed a section 388 petition to terminate mother's visits because they were detrimental to T.T.<sup>2</sup> During a visit in May 2014, T.T. cried and begged Ms. D. not to leave. He then played independently with toys mother provided, and asked her where "mommy" was. Ms. D. reported T.T. was upset after the visit, cried all night and did not let her leave the room. The monitor observed T.T. did not appear to have a bond with mother; he "tuned mother out and played as though he was alone."

In June 2014, Ms. D.'s adoptive home study was approved. The same month, the court held a combined sections 388 and 366.26 hearing. T.T.'s half-sister and the

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<sup>2</sup> In 2013, mother had filed and withdrawn a prior section 388 petition. We granted her motion to augment the record with a copy of the section 388 petition she filed in March 2014.

maternal grandfather testified that mother had turned her life around. Mother testified she was living with her sponsor, and she visited T.T. twice a month for one hour. She admitted she did not know much about T.T.'s condition, but claimed she was not given information about it or allowed to go to his medical appointments because she did not have reunification services.

The court denied mother's petition. It commended mother for her progress but found the proposed modification would not be in T.T.'s best interest because the child needed to continue in the stable placement with Ms. D. The court found the beneficial parental exemption did not apply because mother had not had regular contact with T.T., and terminated her parental rights. This appeal followed.

## DISCUSSION

### I

Section 388 provides the juvenile court with discretion to modify a previous order when a parent presents evidence of changed circumstances and demonstrates that the requested modification is in the child's best interests. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317 (*Stephanie M.*)) The parent bears the burden of proving by a preponderance of the evidence that the modification should be granted. (*Ibid.*) We review the court's decision on a section 388 petition for abuse of discretion. (*Id.* at p. 318.) The decision will not be disturbed on appeal unless it is "arbitrary, capricious, or patently absurd." (*Id.* at p. 318.) We do not reweigh the evidence, redetermine the credibility of witnesses, or resolve conflicts in the evidence or in the reasonable inferences that may be drawn from it. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52–53.)

The juvenile court denied mother's petition for failing to establish that renewing her reunification services would be in T.T.'s best interest. Where, as here, the section 388 petition follows the termination of reunification services, the child's interest in continuity and stability is paramount, and there is a rebuttable presumption that continuing foster care is in the child's best interest. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 317–318.) To rebut the presumption that continuity is in the child's best interest, the

parent must show how a modification of the court's earlier order would advance the child's need for permanency and stability. (*In re J.C.* (2014) 226 Cal.App.4th 503, 527.)

Mother recognizes that a modification is not in the child's best interest if it would be harmful to the child. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 419 ["courts may place great weight on evidence that after a substantial period in foster care, the severing of a bond with the foster parents will cause long-term, serious emotional damage to the child"].) In *Stephanie M., supra*, 7 Cal.4th 295, 325, the Supreme Court held that the juvenile court was within its discretion in refusing to remove an emotionally fragile special needs three-year-old girl from the foster parents, with whom she had bonded, in order to place her with her grandmother, whom the girl barely knew.

The record indicates that T.T., too, is a special needs child, who, in his therapist's view, requires the stability and continuity of care he has received from the foster mother. There is evidence that even two visits a month with mother are sufficient to cause behavioral setbacks. He has lived with Ms. D. practically his entire life and is so strongly bonded with her that he suffers from separation anxiety when she is not around. On the other hand, significant interruptions in mother's visits with him have resulted in the lack of a bond with mother, as observed by a monitor less than a month before the section 388 hearing.

Mother attempts to minimize the similarity of this case to *Stephanie M., supra*, 7 Cal.4th 295. She focuses on isolated signs of affection observed during some visits in early 2012, and on the relative improvement of visits in 2014. The 2012 visitation logs indicate that even then T.T. acted aggressively towards mother, and mother was unable to control his tantrums. Moreover, the early visits are not an accurate indicator of the relationship between mother and child because mother failed to visit T.T. during most of 2013, and when she resumed regular visitations, the child reacted to her as to a stranger. Even though the visits gradually improved to the point that T.T. stopped crying uncontrollably for their entire duration, there was no bond observed between mother and T.T., who reportedly referred to Ms. D. as "mommy" and tended to "tune out" mother. T.T. continued to exhibit increased aggressiveness and distress after visits.

The court did not abuse its discretion in denying mother's section 388 petition. Mother showed she had regained control of her life and her biweekly visits with T.T. were gradually improving. But there is no indication that increased interaction with mother, which would necessarily cause additional disruption in T.T.'s routine, would promote his need for stability, and the record suggests otherwise.

## II

The exception to terminating parental rights in section 366.26, subdivision (c)(1)(B)(i) applies when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." To overcome the presumption in favor of adoption, the parent must prove that severing the parent-child relationship will cause great harm to the child. (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 853.) Whether a beneficial parent-child relationship exists is a factual issue, subject to the substantial evidence standard of review. (*In re K.P.* (2012) 203 Cal.App.4th 614, 622.) Whether that relationship is "a compelling reason" to not terminate parental rights is reviewed for abuse of discretion. (*Ibid.*)

Relevant factors include "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs . . . ." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576.) The beneficial relationship exception applies "only where the court finds regular visits and contact have continued or developed a significant, positive, emotional attachment from child to parent." (*Id.* at p. 575.) A beneficial relationship is difficult to establish "where the parents have essentially never had custody of the child nor advanced beyond supervised visitation." (*In re Casey D., supra*, 70 Cal.App.4th at p. 51.)

Substantial evidence supports the court's conclusion that the beneficial relationship exception does not apply in this case. Mother lost custody of T.T. shortly after his birth, and her contact with him has been sporadic and irregular. She did not visit T.T. at all for most of 2013, and her visits between September 2013 and May 2014 were limited to one hour twice a month. In four years, mother did not progress beyond the occasional monitored visit, and there is no evidence that at the time of the hearing T.T.

had any emotional attachment to her; to the contrary, the visits with mother reportedly exacerbated T.T.'s condition. Absent a beneficial parent-child relationship, the court did not abuse its discretion in terminating mother's parental rights.

**DISPOSITION**

The order is affirmed.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

COLLINS, J.